

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

NICHOLAS J. HINE, SR.

Plaintiff,

v.

BRIAN D. HIESTER ET AL.

Defendants.

CIVIL ACTION NO. 05-CV-6268

MEMORANDUM ORDER

AND NOW, this ____ day of May, 2006, upon consideration of Defendants' Motion to Dismiss Plaintiff's Complaint (Doc. 3), Plaintiff's Response (Doc. 5), and Defendants' Reply (Doc. 6), **IT IS HEREBY ORDERED and DECREED** that Defendant's Motion is **GRANTED**. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure Rule 12(b)(6).

Plaintiff alleges in his complaint that Defendants, policymaking officials acting under color of state law, violated his rights under the Fourteenth Amendment to the United State Constitution by "the attempted use of a coerced statement in a criminal trial." (Compl. ¶ 3.) Plaintiff brings his action pursuant to 42 U.S.C. § 1983, and seeks monetary damages from Defendants Brian D. Hiester ("Hiester"), who is Chief of Police of the Township of Cumru, and the Township of Cumru ("Cumru").

1. Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted

In considering a motion to dismiss under Rule 12(b)(6), the court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to

relief.” Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988) (citations omitted), *cert. denied*, 489 U.S. 1065 (1989); see Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The question is whether the plaintiff can prove any set of facts consistent with his allegations that will entitle him to relief, not whether he will ultimately prevail. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Moreover, the claimant must set forth sufficient information to outline the elements of his claims or to permit inferences to be drawn that these elements exist. See FED. R. CIV. P. 8(a)(2); Sadrudin v. City of Newark, 34 F. Supp. 2d 923, 925 (D.N.J.,1999) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). A motion to dismiss may be granted only “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley, 355 U.S. at 45-46 (1957).

Whether the Court must dismiss Plaintiff’s complaint in this case turns on whether Defendants’ attempted use of Plaintiff’s coerced statement in a criminal trial, taken as true, is a legally cognizable violation of Plaintiff’s Fourteenth Amendment rights such that this Court may grant Plaintiff relief, pursuant to 42 U.S.C. § 1983.

2. Recovery Under 42 U.S.C. § 1983

To recover under 42 U.S.C. § 1983,¹ Plaintiff must prove that Defendants have deprived him of a right secured by the “Constitution and laws” of United States, and that Defendants deprived him

¹Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1983 (2005).

of this constitutional right “under color of any statute, ordinance, regulation, custom or usage, of any State or Territory,” that is, while acting “under color of law.” Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970). Thus, to state a claim for relief under § 1983, Plaintiff must allege, *first*, the violation of a right secured by the Constitution or laws of the United States and, second, that the alleged deprivation was committed or caused by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir.1994). If the facts alleged by plaintiff would, if taken as true, not amount to a constitutional violation, the Court will dismiss on a motion under Rule 12(b)(6) and need not consider questions concerning immunities and defenses. See Fidler v. Rundle, 497 F.2d 794, 802 (3d Cir. 1974).

3. Fourteenth Amendment Procedural Due Process Claim

In the instant case, Plaintiff states that Defendants violated his constitutional rights by ordering him to appear for an administrative interview in relation to criminal charges pending against Plaintiff, after being informed that Plaintiff had secured counsel and invoked his right to remain silent, and then, specifically, forwarding a copy of a stenographic transcript of the interview to the district attorney who was prosecuting those criminal charges filed against Plaintiff. (Compl. ¶¶ 15, 17, 23.) Plaintiff says that Defendants violated his right to procedural due process guaranteed by the Fourteenth Amendment,² and expressly disclaims any reliance upon substantive due process rights. (Pl.’s Reply to Defs.’ Mot. to Dismiss 11.)

Whether Plaintiff was deprived of life, liberty, or property without due process of laws turns on “whether the asserted individual interests are encompassed within the fourteenth amendment’s

²Section one of the Fourteenth Amendment provides, in relevant part, that no state shall “deprive any person of life, liberty, or property, without due process of law” U.S. CONST. amend. XIV, § 1.

protection of ‘life, liberty, or property’; if protected interests are implicated, [the Court] must decide what procedures constitute ‘due process of law’.” Unger v. Nat’l Residents Matching Program, et al., 928 F.2d 1392, 1395 (3d Cir. 1991) (citing Robb v. City of Philadelphia, 733 F.3d 286, 292 (3d Cir. 1984)).

Plaintiff relies in his case on the law of Garrity, et al. v. New Jersey as the source of his protected interest, which in this case, is limited to a liberty and/or property interest. 385 U.S. 493 (1967). In Garrity, the Supreme Court held that “the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic.” Id. at 500.

As a matter of constitutional law, Plaintiff can sustain his § 1983 cause of action for a Fourteenth Amendment procedural due process claim (1) by pleading an infringement of this liberty interest such that Defendants’ conduct “seriously damaged his standing and associations in his community” by “impos[ing] upon him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities,” or (2) by pleading a deprivation of a property interest in a benefit, where he has “a legitimate claim of entitlement to it.” See Unger, 928 F.2d at 5,6 (citing Board of Regents v. Roth, 408 U.S. 564, 573-74, 577 (1972)).

With respect to a liberty interest, Plaintiff has neither pleaded that Defendants’ attempted use of Plaintiff’s coerced statement in a criminal trial in violation of his Garrity protections resulted in serious damage to his standing and associations in his community, nor pled that the infringement imposed upon him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. Thus Plaintiff has not stated a claim for an unconstitutional deprivation

of a liberty interest upon which relief may be granted. Rather, Plaintiff states in his complaint that he “was tried before a jury and found not guilty on all counts” and “was ultimately reinstated as a police officer . . . as a result of an arbitration award under the collective bargaining agreement.” (Compl. ¶¶ 25, 27.)

As it pertains to a property interest, Plaintiff’s claim is a bit more involved, although no more viable. While Plaintiff has clearly articulated the existence of a property interest in a benefit where he has a legitimate claim of entitlement to it, he has also failed to plead that he was deprived of that property interest. In light of the law of Garrity, as well as the language of the notice Plaintiff received when he was compelled to give statements relating to his pending criminal charges,³ Plaintiff is indeed entitled under the Fourteenth Amendment to protection against the use of his coerced statements in subsequent criminal proceedings when those statements are obtained, as they were in this case, under threat of removal from office. Although the Court finds here that a state actor’s violation of Garrity’s protections can give rise to a Fourteenth Amendment procedural due process claim, Defendants’ conduct in this case does not give rise to such a claim as a matter of law.

Plaintiff’s only federal constitutional entitlement was to be free from the use of his statements in subsequent criminal proceedings.⁴ In this case, because Plaintiff was afforded that protection

³The Chief of Police ordered Plaintiff to an interview and sent him the following notice which stated in part:
The information gathered during this interview is solely and exclusively for internal purposes and will not be released to any other law enforcement agency. In addition, this information will not and cannot be used against you in any subsequent proceeding, other than disciplinary proceedings within the purview of the municipal government of the Township of Cumru (Garrity v. New Jersey, 308 U.S. 493 (1967).

(Compl. ¶¶ 17, 18.) Plaintiff appeared for and participated in the interview in reliance on this agreement, and was thus entitled to the assurances contained therein.

⁴Whether Plaintiff has a state law remedy arising from Defendants’ use of his interview information for external purposes or its release to another law enforcement agency is beyond the scope of this Court’s jurisdiction.

when the trial court suppressed his statements from his criminal trial (Compl. ¶ 24), he lacks standing to pursue this claim.

Because Plaintiff fails to set forth a liberty or property interest sufficient to withstand a motion to dismiss, the complaint is dismissed pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which this Court may grant relief.

IT IS FURTHER ORDERED that the Clerk of the Court shall mark the above-captioned case **CLOSED**.

BY THE COURT:

Hon. Petrese B. Tucker, U.S.D.J.